

**Final Order Denying Refund: 01-20180795
Individual Income Tax
For the Year 2010**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Farmers were not entitled to carry back farming losses on their Indiana income tax. Although the IRS permitted a five-year carryback period for farm losses, Indiana law required the Indiana Farmers to carry-forward their net operating losses.

ISSUE

I. Individual Income Tax - Farming Losses.

Authority: IC § 6-3-2-2.5(b); IC § 6-3-2-2.5(e)-(g); IRS Publication 536, Net Operating Losses for Individual, Estates, and Trusts, https://www.irs.gov/publications/p536#en_US_2017_publink1000177358.

Taxpayers argue they are entitled to a refund of Indiana individual income tax attributable to the carry-back of farming losses.

STATEMENT OF FACTS

Taxpayers are Indiana individuals who operate a farm business. Taxpayers filed an amended 2010 Indiana income tax return seeking a refund of approximately \$700. The amended Indiana return was postmarked August 2017.

The Indiana Department of Revenue ("Department") responded in a letter dated January 2018. The Department denied the refund explaining as follows:

Your claim requesting the refund was not received before the 3 year period had expired. Therefore, your claim for refund in the amount of [\$700] has been denied.

Taxpayers disagreed with the Department's decision in a letter received by the Department February 2018. Taxpayers explained that because the refund claim was based on "farm losses," they were entitled to the refund. Taxpayers state:

I am aware that a claim of excess withholding must be filed within a 3 year period per Indiana Code 6-8.1-9-1(a). However, it is my understanding that the 3 year limit applies to non-farming losses.

Please note that my amended return for 2010 is for farming losses. It is my understanding that farming losses have a 7 year limit which had not expired at the time we filed and, hence, I believe was timely filed.

Taxpayers took part in an administrative hearing and further explained the basis for their protest. This Final Order Denying Refund results.

I. Individual Income Tax - Farming Losses.

DISCUSSION

Taxpayers argue that because farming losses have an extended carryback period, they were entitled to carry back those losses to 2010.

At the outset, the IRS explains that farming losses have a 5 year loss carryback. As explained in IRS Publication 536 (2017):

The carryback period for a farming loss is 5 years. Only the farming loss portion of the NOL can be carried back 5 years. A farming loss is the smaller of:

1. The amount that would be the NOL for the tax year if only income and deductions attributable to farming businesses were taken into account, or
2. The NOL for the tax year.

IRS Publication 536, Net Operating Losses for Individual, Estates, and Trusts,
https://www.irs.gov/publications/p536#en_US_2017_publink1000177358 (Last visited March 21, 2018).

However, Indiana has its own rules governing the carryback and carry forward of net operating losses.

IC § 6-3-2-2.5(b) provides as follows:

Resident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. *A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.*

(Emphasis added).

Indiana law does not allow the carryback of net operating losses but, subject to certain limitations, IC § 6-3-2-2.5(e) - (g) permit the *carry forward* of net operating losses.

In Taxpayers' case, they were not permitted to carry back the NOLs, and the Department did not make a mistake in denying Taxpayers' refund.

FINDING

Taxpayers' protest is respectfully denied.

March 29, 2018

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